

**DEPARTMENT OF MOTOR VEHICLES  
COUNSEL'S OFFICE**

**OPINION OF COUNSEL  
(#1-2015)**

**Subject:** Section 1229-c of the Vehicle and Traffic Law/Seat Belt Law

**Date:** September 16, 2015

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**Issue**

The question is whether it is a violation of section 1229-c of the Vehicle and Traffic Law (VTL) if a person in a seating position equipped with both a lap belt and a shoulder harness belt wears the shoulder harness behind his or her back.

**Discussion**

The contention that the shoulder harness may be worn behind a person's shoulder was, at one time, supported by legislative history and case law. Chapter 365 of the Laws of 1984 enacted the original seat belt law in New York State. In his approval message, Governor Mario M. Cuomo wrote:

"I note also the legislative intent of the bill is to require use of safety belts across the lap. Thus, if the shoulder harness causes discomfort, it could be placed behind the person."

In People v. Cucinello, 183 Misc2d. 50 (App Term 2<sup>nd</sup> Dept. 1999), the Court held that section 1229-c (2) of the VTL did not require the occupant of a seating position to wear both the lap belt and the shoulder harness. The Court wrote:

"While the term, 'safety belt,' is not expressly defined in the statute, said term can refer to either 'seat safety belts' or 'shoulder harness safety belts' Inasmuch as defendant's son was restrained by a safety belt, viz., a seat safety belt, defendant should not have been deemed in violation of Vehicle and Traffic Law § 1229-c."

Following Cucinello, in People v. Widrick, 185 Misc2d 765 (2000), the Watertown City Court wrote:

“If the Legislature and/or Commissioner expect both the shoulder harness safety belt and the seat safety belt (lap) to be used together, the statute and/or regulations should have been so worded to require joint use of them regardless of the design model for these belts in the motor vehicle--passive, separate or unitized. As it is now worded the statute fails in its wording to give an "unequivocal warning" that the defendants' conduct not *malum in se* violates the Vehicle and Traffic Law.”

In response to these court decisions, the Legislature addressed the question of whether both the seat belt and shoulder harness should be worn with the enactment of Chapter 546 of 2002, which added a new subdivision (3-a) to section 1229-c of the VTL, to provide:

“3-a. Except as otherwise provided for passengers under the age of four, it shall be a violation of this section if a person is seated in a seating position equipped with both a lap safety belt and a shoulder harness belt and such person is not restrained by both such lap safety belt and shoulder harness belt.”

The Sponsor’s Memorandum in Support noted that studies demonstrated that the use of both the lap belt and the harness belt afforded greater protection to motor vehicle occupants and reduced their chance of injuries and fatalities. For example, a 1990 study by General Motors Research Laboratories found that using both the lap belt and shoulder harness belt was far more effective than using only the lap or shoulder harness in preventing death and injuries. A study by the Transportation Research Institute at the University of Michigan found that shoulder belts provide greater protection than lap belts, although wearing both together affords the greatest protection. These studies assumed that the occupant wore the shoulder harness across the shoulder and torso so that it could provide restraint in the event of a crash.

Studies aside, common sense dictates the only way for the shoulder harness to provide occupant protection is to wear the harness across the shoulder so that it restrains the occupant during a crash. A shoulder harness worn behind the shoulder provides no benefit to the vehicle occupant and defeats the intent and purpose underlying VTL §1229-c(3-a). This position was supported in People v Fortin, 16 Misc 3d 615 (2007), where the City of Amsterdam Court found that it was a violation of VTL 1229-c(3) when the defendant wore the shoulder harness under his arm. The Court wrote that both the plain meaning and “spirit and purpose” of VTL §1229-c(3-a) requires the use of both the lap and shoulder harness belts, in part because they afford the best protection to the occupant. Since the Fortin Court concluded that it was a violation of the law to wear the shoulder harness under the arm, because that undermines the intent of the statute, the logical corollary is that it is a violation to wear the shoulder harness behind the shoulder because that also undermines the statutory intent, i.e., restraining the vehicle occupant.

**Conclusion**

The purpose of the addition of subdivision (3-a) to section 1229-c was to maximize occupant protection by requiring the occupant to wear both the lap belt and the shoulder harness. Protection is only provided if the shoulder harness is worn properly, that is, across the shoulder and torso. Therefore, it is Counsel's Office's opinion that VTL §1229-c(3-a) requires that an occupant of a motor vehicle must wear the shoulder harness across the shoulder and torso in order to be in compliance with the law.

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